

Though the claimant's husband and adult daughter both received SSDI benefits, the claimant is not the one receiving them. As such, these family members' SSDI benefits are not counted as part of the claimant's monthly income. Since the claimant's ordinary and necessary monthly household expenses exceed her household monthly income, she is entitled to an overpayment waiver pursuant to G.L. c. 151A, § 69(c), as recovery of the overpaid benefits would defeat the purpose of benefits otherwise authorized.

Board of Review
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Issue ID: 334-FHJM-DNDH

Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to deny the claimant's request for a waiver of an overpayment assessment. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant was assessed an overpayment of \$2,824.00 pursuant to G.L. c. 151A, § 71. She applied for a waiver of recovery of the overpayment, which was denied by the agency in a determination issued on February 20, 2025. The claimant appealed the denial to the DUA hearings department. Following a hearing on the merits, which the claimant attended, the review examiner affirmed the agency's initial determination and denied the waiver in a decision rendered on April 24, 2025. We accepted the claimant's application for review.

The review examiner determined that, although the claimant was not at fault, recovery of the overpayment would not be against equity and good conscience or defeat the purpose of benefits otherwise authorized, and, thus, the claimant was not entitled to a waiver of the overpayment pursuant to G.L. c. 151A, § 69(c). Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal.

The issue before the Board is whether the review examiner's decision to deny an overpayment waiver is supported by substantial and credible evidence and is free from error of law, where the findings show that the review examiner included the spouse's monthly Social Security Disability Insurance (SSDI) payment in calculating the claimant's monthly household income, and that income exceeds the claimant's necessary and ordinary living expenses.

Findings of Fact

The review examiner's findings of fact are set forth below in their entirety:

1. The claimant filed her claim for unemployment benefits on June 18, 2024 (Claim ID # 2024-01). The effective date of the claim is June 16, 2024.

2. The claimant had a prior claim for unemployment benefits on June 8, 2023 (Claim ID # 2023-01). The effective date of the claim is June 4, 2023.
3. The claimant received unemployment benefits after filing her claim. The claimant used the unemployment benefits received to pay her living expenses, such as her rent and food.
4. At some point, the claimant applied for food stamps but was determined not to be eligible. The claimant does not know if she would have been eligible if she was not receiving unemployment benefits.
5. On July 31, 2024, the claimant was issued a Notice of Disqualification under Section 25(e)(2) of the Law, with an overpaid amount of \$2,824. The claimant did not file an appeal to that disqualification.
6. As a result of the disqualification, the claimant was overpaid unemployment benefits. The overpayment was not due to any fault on the part of the claimant.
7. The claimant is married. The claimant has a 27-year-old daughter with a disability. Her daughter resides with her and her husband.
8. The claimant's daughter receives \$800 per month in disability payments. She also receives \$200 in food stamps.
9. The claimant's husband does not work because he is sick. He receives \$1,654 per month in Social Security payments.
10. The claimant resides with her husband and her daughter. [Their] monthly rent is \$1,238.
11. The claimant works as a food service/cafeteria person for the employer. The claimant works 37.50 hour[s] per week. The claimant is paid \$19.75 per hour (gross amount \$740.62 per week).
12. The claimant takes public transportation to work. The claimant pays \$20 per week for transportation costs (approximately \$86 per month).
13. The claimant and her husband's monthly expenses include an average of \$350 for electricity, \$225 for phone, \$750 for food, \$100 for clothing, and \$150 for personal hygiene.
14. The claimant owns a 2020 Honda CRV. There is a loan on the vehicle. The claimant pays \$467 per month on that loan. The claimant does not know the current value of the vehicle.

15. The claimant and her husband pay \$1,500 annually (\$125 per month) for insurance for the vehicle. The claimant and her husband pay \$59 per month for vehicle repairs. The monthly gasoline cost for the vehicle is \$160 per month.
16. The claimant has health insurance. The claimant does not pay for her health insurance. She does not have copayments. The claimant does not have any outstanding medical bills.
17. The claimant and her husband spend approximately \$40 per month in prescription costs.
18. The claimant and her husband have no savings and currently have \$621 in the checking account.
19. The claimant sends \$100 per month to her mother in Santo Domingo. The claimant's husband provides \$100 per month to his parents in Jamaica Plain, MA. The claimant and her husband donate \$200 per month to the church.
20. The claimant has credit card debt in the amount of \$5,000. The claimant incurred that debt for furniture and household items. The claimant pays a total of \$280 per month on that debt.
21. The claimant's husband has credit card debt in the total amount of \$200. (The claimant incurred the debt to purchase an Apple tablet for \$1,400.) The claimant pays \$200 per month on that bill.
22. The claimant requested a waiver of the overpaid benefits.
23. On February 20, 2025, a Notice of Disqualification was issued under Section 69(c) of the Law, indicating "You have not established that your income or resources are insufficient to enable you to meet ordinary living expenses and repay the debt. Additionally you have not established that you gave up any rights when you collected unemployment benefits or used the money for purposes other than those for which you would have spent nonbenefit funds. Recovery of the overpayment would not be against equity and good conscience nor defeat the purpose of benefits otherwise authorized." "There shall be no recovery of payments from any person who, in the judgment of the Commissioner, is without fault on his part and when, in the judgment of the Commissioner, such recovery would defeat the purpose of benefits otherwise authorized or would be against equity and good conscience." Effect of this Determination Repayment of the current remaining balance has not been waived. You are responsible for repayment of \$2,824.00." The claimant filed an appeal to that determination.

Ruling of the Board

In accordance with our statutory obligation, we review the record and the decision made by the review examiner to determine: (1) whether the findings are supported by substantial and credible evidence; and (2) whether the review examiner's conclusion is free from error of law. Upon such review, the Board adopts the review examiner's findings of fact and deems them to be supported by substantial and credible evidence. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant is not entitled to an overpayment waiver.

The claimant's eligibility for a waiver is governed by G.L. c. 151A, § 69(c), which provides, in relevant part, as follows:

The commissioner may waive recovery of an overpayment made to any individual, who, in the judgment of the commissioner, is without fault and where, in the judgment of the commissioner such recovery would defeat the purpose of benefits otherwise authorized or would be against equity and good conscience.

In her decision, the review examiner determined that the claimant was not at fault for the overpayment. *See* Finding of Fact # 6. With no fault attributed to the claimant for the overpaid benefits, we consider whether the claimant has established that she is otherwise eligible for a waiver because the recovery of the overpaid benefits would defeat the purpose of benefits otherwise authorized or would be against equity and good conscience.

The DUA regulations at 430 CMR 6.03 further define the phrases "against equity and good conscience" and "defeat the purpose of benefits otherwise authorized," as follows:

Against Equity and Good Conscience means that recovery of an overpayment will be considered inequitable if an overpaid claimant, by reason of the overpayment, relinquished a valuable right or changed his or her position for the worse. In reaching such a decision, the overpaid claimant's financial circumstances are irrelevant.

Defeat the purposes of benefits otherwise authorized means that recovery of the overpayment would deprive the overpaid claimant, or individuals dependent on the claimant, of income required for ordinary and necessary living expenses. This depends upon whether the overpaid claimant or his dependents have income or financial resources sufficient for more than ordinary and necessary needs or are dependent upon all current income for such needs. Ordinary and necessary living expenses include, but shall not be limited to:

- a. fixed living expenses, such as food and clothing, rent, mortgage payments, utilities, accident and health insurance, taxes, and work-related transportation expenses;
- b. medical and hospitalization expenses;
- c. expenses for the support of others for whom the individual is legally responsible;
- d. other miscellaneous expenses which may reasonably be considered as part of an individual's necessary and ordinary living expenses.

Finding of Fact # 4 reflects that the claimant had applied for governmental assistance in the form of food stamps.¹ However, the record gives us no indication as to when she applied for food stamps. In addition, the claimant did not present any evidence to show that she would have been eligible for food stamps if she was not receiving unemployment benefits. *See* Finding of Fact # 4. Given this record, we cannot conclude that the claimant relinquished a valuable right based upon her receipt of unemployment benefits. Thus, we cannot conclude that the recovery of the overpayment would be against equity and good conscience.

However, we disagree with the review examiner's decision to deny the waiver because it would not defeat the purpose of the benefits otherwise authorized.

We note that the review examiner improperly assessed the claimant's eligibility for a waiver based on her gross monthly income rather than her net monthly income. However, this error does not affect the outcome of our decision.

Here, the claimant resides with her ill husband and adult disabled daughter. *See* Findings of Fact ## 7 and 9. The claimant testified that she earns \$740.62 per week, which equates to a gross monthly income of \$3,184.66.² *See* Finding of Fact # 11. Finding of Fact # 9 states that the husband receives \$1,654.00 per month in Social Security. Because the review examiner found that the husband was not working due to poor health, and she references his monthly income as disability payments in the Conclusions and Reasoning section of her decision, we can reasonably infer that he is receiving Social Security Disability Income (SSDI) benefits as opposed to Social Security Retirement benefits each month.

The findings also reflect that the adult daughter receives \$800.00 per month in SSDI and \$200.00 per month in food stamps. *See* Finding of Fact # 8. We agree with the review examiner's decision not to include the daughter's SSDI benefits (including the food stamps) in the claimant's monthly household income as her reason for doing so is consistent with our holding in Board of Review Decision 0035 7386 70 (Oct. 8, 2020). In that case, the claimant's minor child, who resided with the claimant, received monthly SSDI payments. We held that the claimant was not presumptively eligible for a waiver under the plain reading of 430 CMR 6.05(3)(b)(2), because the SSDI benefits were received by a family member and not by the claimant herself.³ Thus, we declined to include the minor child's SSDI payments as part of the claimant's monthly household income.

¹ Food stamps are administered by the Massachusetts Department of Transitional Assistance, and it is now known as the Supplemental Nutrition Assistance Program (SNAP), commonly referred to as SNAP benefits. *See* Commonwealth of Massachusetts, *SNAP benefits (formerly food stamps) | Mass.gov* (last visited July 22, 2025).

² To determine gross monthly income, we multiple the amount the claimant receives per week (\$740.62) by 4.3 (the average number of weeks per month) which equals \$3,184.66.

³ 430 CMR 6.05(3)(b)(2), provides as follows:

Waiver requests shall be granted or denied in accordance with the following example: (b) An overpaid claimant is found to be without fault as regards the overpayment; and (2) Recovery would not be "against equity & good conscience", but would "defeat the purpose of benefits otherwise authorized". The request for waiver is granted. For the purpose of this provision, any claimant applying for a waiver who presents documentation of current receipt of Emergency Assistance to Elderly, Disabled and Children benefits, (EAEDC), Supplemental Security Income benefits (SSI) or Social Security Disability Insurance benefits (SSDI) combined with SSI shall be presumptively eligible for a waiver of overpayment pursuant to 430 CMR 6.05.

Applying that same principle to the facts before us, we reject the review examiner's calculations which include the husband's SSDI payments as part of the claimant's monthly income. The husband is also a family member, and he was the one receiving the benefit, not the claimant. Disregarding SSDI payments received by family members leaves the claimant with a monthly gross income of \$3,184.66.

Based upon our calculations, the findings of fact rendered by the review examiner show that the claimant's ordinary and necessary living expenses total \$4,230.00.⁴ See Findings of Fact ## 10, 11-15, 17, 20, and 21. Inasmuch as \$4,230.00 exceeds her gross monthly income of \$3,184.66, the claimant has shown that recovery of an overpayment would defeat the purpose of benefits otherwise authorized, as meant under 430 CMR 6.03.

We, therefore, conclude as a matter of law that the claimant has met her burden to show that she is entitled to a waiver of overpaid benefits pursuant to G.L. c. 151A, § 69(c).

The review examiner's decision is reversed. The claimant is not required to repay any of the remaining overpaid benefits balance.

BOSTON, MASSACHUSETTS
DATE OF DECISION - July 31, 2025



Paul T. Fitzgerald, Esq.
Chairman



Michael J. Albano
Member

Member Charlene A. Stawicki, Esq. did not participate in this decision.

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS
STATE DISTRICT COURT
(See Section 42, Chapter 151A, General Laws Enclosed)**

The last day to appeal this decision to a Massachusetts District Court is thirty days from the mail date on the first page of this decision. If that thirtieth day falls on a Saturday, Sunday, or legal holiday, the last day to appeal this decision is the business day next following the thirtieth day.

⁴ Because the record does not show that the expenses listed in Finding of Fact # 19 are necessary living expenses, we decline to include them in the total monthly expenses.

To locate the nearest Massachusetts District Court, see:
www.mass.gov/courts/court-info/courthouses

Please be advised that fees for services rendered by an attorney or agent to a claimant in connection with an appeal to the Board of Review are not payable unless submitted to the Board of Review for approval, under G.L. c. 151A, § 37.

DY/rh